APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,443	03/26/2004	Edward J. Franczek	2222.5230005	8971

26111   7590   08/18/2008
STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.
1100 NEW YORK AVENUE, N.W.
WASHINGTON, DC 20005

EXAMINER
ALMEIDA, DEVIN E

ART UNIT	PAPER NUMBER
2132	

MAIL DATE	DELIVERY MODE
08/18/2008	PAPER

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/810,443
Filing Date: March 26, 2004
Appellant(s): FRANCZEK ET AL.

James J. Pohl
Reg. 60,724
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 6/30/2008 appealing from the Office

action mailed 11/01/2007.

(1) Real Party of Interest

A statement identifying by name the real party in interest is contained in the brief

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,623,600	Ji et al	4-1997
5440723	Arnold et al	8-1995

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ji et al (5,623,600) in view of Arnold et al (5,440,723).

Ji teaches with respect to claim 1, a method comprising: receiving (by a server) computer data (files) from a first computer (i.e. a node from which the files came) for transmission to a second computer (i.e. a recipient node which is to receive the files) via a network (figure 1 element 28); and screening (figure 8B) the computer data for at least one virus before communicating the computer data to the second computer (see Ji Abstract, column 3 lines 52-63 and column 10 lines 26 – column 11 line 40). Ji does not teach wherein said screening comprises creating a model of the second computer, installing a program contained in the computer data on the model and screening the model for the at least one virus. Arnold teaches wherein said screening comprises creating a model of the second computer, installing a program contained in the computer data on the model and screening the model for the at least one virus (see column 8 line 28-60). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains to have install the computer data on a model machine to check of virus because it is the safest and most reliable way of check for viruses (see column 8 line 28-60). Therefore one would have been motivated to have installed computer data on a model machine for the scanning of viruses.

With respect to claim 2, wherein the network comprises an IP network (see Ji column 4 lines 17-32).

With respect to claim 3, if the at least one virus is detected, performing at least one of the following: (i) inhibiting communication of at least a portion of the computer data to the second computer; (ii) removing the at least one virus from the computer data prior to transferring the computer data to the second computer; (iii) communicating a message indicating that the at least one virus was detected to the second computer; (iv) communicating a message indicating that the at least one virus was detected to the first computer; and (v) writing data to a database indicating that the at least one virus was detected (see Ji figures 8A, 8B, 8C and column 11 lines 6-40).

With respect to claim 4, receiving computer data from the second computer for transmission to the first computer; and screening the computer data received from the second computer for at least one virus before communicating the computer data received from the second computer to the first computer (see Ji Abstract, column 3 lines 52-63 and column 10 lines 26 – column 11 line 40 i.e. node 33 also performs virus detection on all messages being transmitted into or out of an associated network).

With respect to claim 5, a virus screening device operative to be connected to a network and operative to screen computer data received from a first compute (e.g. an element 30 in network 22) for at least one virus before communication the computer data to a second computer (e.g. an element 30 in network 24), the virus screening device (see figure 1, column 3 lines 52-63 and column 10 lines 26 – column 11 line 40). Ji does not teach a model of the second computer, the model configured to have a

program contained in said computer data installed thereon, and wherein said model is further configured to be screened for the at least one virus. Arnold teaches a model of the second computer, the model configured to have a program contained in said computer data installed thereon, and wherein said model is further configured to be screened for the at least one virus (see column 8 line 28-60). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains to have install the computer data on a model machine to check of virus because it is the safest and most reliable way of check for viruses (see column 8 line 28-60). Therefore one would have been motivated to have installed computer data on a model machine for the scanning of viruses.

With respect to claim 6, wherein the network comprises an IP network (see Ji column column 4 lines 17-32 i.e).

With respect to claim 7, wherein a configuration associated with the second computer routes communicated data to the virus screening device (see column 3 lines 52-63 node 33 also performs virus detection on all messages being transmitted into or out of an associated network, and column 10 lines 26 – column 11 line 40).

With respect to claim 8, a third computer communicatively linked to the second computer via a local area network (see figure 1 e.g. there is many element 30 in network 24), wherein the virus screening device resides outside the local area network (see figure 1 e.g. node 26).

With respect to claim 9, wherein the computer data comprises an electronic mail message (see Ji Abstract i.e. SMTP).

With respect to claim 10, wherein the computer data comprises data requested by the second computer from the first computer (see Ji Abstract, column 6 lines 55 – 61).

With respect to claim 11, a method comprising: receiving screened data from a network-based virus screening device configured to screen data for at least one virus before communicating the data to a first computer; and forwarding the screened data to the first computer (see Ji Abstract, column 3 lines 52-63 and column 10 lines 26 – column 11 line 40). Ji does not teach wherein said screening comprises creating a model of the second computer, installing a program contained in the computer data on the model and screening the model for the at least one virus. Arnold teaches wherein said screening comprises creating a model of the second computer, installing a program contained in the computer data on the model and screening the model for the at least one virus (see column 8 line 28-60). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains to have install the computer data on a model machine to check of virus because it is the safest and most reliable way of check for viruses (see column 8 line 28-60). Therefore one would have been motivated to have installed computer data on a model machine for the scanning of viruses.

With respect to claim 12, receiving a request for requested data from the first computer; sending the request across a network to a second computer; and requesting that the requested data be returned via the network-based virus screening device (see Ji figures 6A, 6B, and 6C and column 6 lines 55 – column 9 line 26).

With respect to claim 13, wherein the network comprises an IP network (see Ji column column 4 lines 17-32).

With respect to claim 14, wherein the network-based virus screening device resides within a wide area network, and wherein the method further comprises: receiving across a local area network (see figure 1 element 22) a request for requested data from the first computer; sending the request across the wide area network to a second computer (see figure 1 e.g. element 30 in node 22 sends data to element 30 in network 26); and requesting that the requested data be returned via the network-based virus screening device (see Ji figures 1, 6A, 6B, and 6C and column 6 lines 55 – column 9 line 26).

With respect to claim 15,receiving a request for requested data from the first computer at a modem external to the first computer (see figure 1); and initiating communication of the request from the modem across an IP network to a second computer (see Ji column column 4 lines 17-32 i.e).

With respect to claim 16, forwarding a request to terminate a virus screening function of the network-based virus screening device (see Ji column 11 lines 6-40 i.e. do nothing and transfer mail message).

With respect to claim 17, configuring the network-based virus screening device to inhibit communication of at least a portion of the requested data (see Ji column 11 lines 6-40).

With respect to claim 18, configuring the network-based virus screening device to inhibit communication of executables to the first computer (see Ji column 11 lines 6-40).

With respect to claim 19, wherein the network-based virus screening device resides within a wide area network, and wherein the method further comprises: configuring the network-based virus screening device to inhibit communication of executables to the first computer (see Ji column 11 lines 6-40); and configuring an electronic mail system associated with the first computer to route messages addressed to the first computer through the network-based virus screening device (see Ji figure 6A, 6B, 6C and column 6 lines 55 – 9 line 26).

With respect to claim 20, wherein the first computer is communicatively coupled to a local area network and the network-based virus screening device resides outside a firewall associated with the local area network, and wherein the method further comprises: configuring the network-based virus screening device to inhibit communication of executables to the first computer (see Ji column 11 lines 6-40); and configuring an electronic mail system associated with the first computer to route messages addressed to the first computer through the network-based virus screening device (see Ji column 11 lines 6-40).

(10) Response to Argument

Applicant's arguments have been fully considered but they are not persuasive. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., that all virus screening at the application level) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the

specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26

USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's argument that Arnold scans for virus at least in part at

the application level while Ji scans for virus below the application level, the test for

obviousness is not whether the features of a secondary reference may be bodily

incorporated into the structure of the primary reference; nor is it that the claimed

invention must be expressly suggested in any one or all of the references. Rather, the

test is what the combined teachings of the references would have suggested to those of

ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In this case, Arnold teaches that installing the computer data on a model

machine to check for virus because it is the safest and most reliable way of check for

viruses (see column 8 line 28-60). This would not change the principle of operation of Ji

it would increase the effectiveness of the virus screener.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the

Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Devin Almeida/   /Gilberto Barron Jr/
Examiner, Art Unit 2132   Supervisory Patent Examiner, Art Unit 2132

Conferees:
/Matthew Smithers/
Primary Examiner, Art Unit 2137
/Gilberto Barron Jr/
Supervisory Patent Examiner, Art Unit 2132